

FILED IN
STATE OF INDIANA) CLERK'S OFFICE) IN THE LAKE SUPERIOR COURT
) SS:
COUNTY OF LAKE) DEC 13 PM 1 22) CAUSE NO. 45D10-0702-PL-00026

THOMAS R. PHILPOT
STATE OF INDIANA,) LAKE SUPERIOR COURT)
)
Plaintiff,)
)
v.)
)
PATRICK MCINTOSH,)
)
Defendant.)

**MOTION FOR LEAVE TO FILE AMENDED
COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS AND CIVIL PENALTIES**

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Mary Ann WehmueLLer, moves the Court to grant leave to amend the State's Complaint for Injunction, Restitution, costs and Civil Penalties, and in support states:

1. On January 29, 2007, the Plaintiff filed its Complaint for Injunction, Restitution, Costs, and Civil Penalties against the Defendant.
2. On November 1, 2007, consumer Ramon D. Ryoti filed a complaint against the defendant with the Attorney General's Office. It is necessary for the plaintiff to amend its January 29, 2007 Complaint to include a restitution claim for Mr. Ryoti.
3. Justice requires that the State be allowed to amend its Complaint so that all claims may be fully and fairly presented.

**REGISTERED/CERTIFIED
RECEIVED**

DEC 13 2007

Thomas R. Philpot
CLERK LAKE SUPERIOR COURT

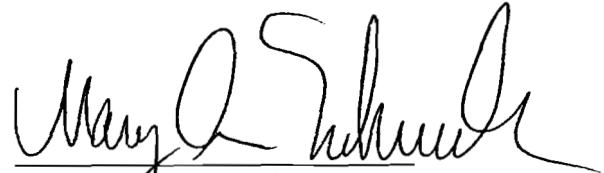
CERTIFIED MAIL/
POST MARKED DEC 12 2007

WHEREFORE, the State respectfully requests the Court to grant it leave to amend its Complaint as shown in Exhibit A, and all just and proper relief.

Respectfully submitted,


Steve Carter
Indiana Attorney General
Atty. No. 4150-64

By:


Mary Ann Wehmuehler
Deputy Attorney General
Atty. No. 15251-49A

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above Motion to Amend Complaint was mailed by United States Mail, first class postage prepaid, to Kenneth A. Manning, counsel for the Defendant, Patrick McIntosh, James, James & Manning, P.C., 200 Monticello Drive, Dyer, Indiana, 46311, on this 12th day of December, 2007.


Mary Ann Wehmuehler

Office of Attorney General
Consumer Protection Division
302 West Washington St., 5th Floor
Indianapolis, IN 46204
(317) 233-3973
maw:440644

STATE OF INDIANA)	IN THE LAKE CIRCUIT COURT
)SS:	
COUNTY OF LAKE)	CAUSE NO. <u>45D10-0702-PL-00026</u>
STATE OF INDIANA,)	
)	
Plaintiff,)	
)	
v.)	
)	
PATRICK MCINTOSH,)	
)	
Defendant.)	

**AMENDED COMPLAINT FOR INJUNCTION,
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Mary Ann WehmueLLer, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, for injunctive relief, consumer restitution, costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5.0.5-4(c).
2. At all times relevant to this Complaint, the Defendant, Patrick McIntosh, was an individual, with a principal place of business in Lake County, located at 9425 Belshaw Road, Lowell, Indiana, 46356, and regularly transacted business with consumers via the Internet.



FACTS

A. The Defendant's Prior Assurance of Voluntary Compliance

3. On January 27, 2006, the State of Indiana entered into an Assurance of Voluntary Compliance ("AVC") with the Defendant, Patrick McIntosh, which was approved by the Lake Superior Court on January 27, 2006. A true and accurate copy of the AVC is attached and incorporated by reference as Exhibit "A."

4. Pursuant to the AVC, the Defendant, agreed, in soliciting and/or contracting with consumers to refrain from representing, either orally or in writing:

- a. the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have, which the Defendant knows or should reasonably know it does not have;
- b. that he is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when he knows or reasonably should know he cannot; and
- c. the consumer will be able to purchase the subject of the consumer transaction as advertised by the Defendant, if the Defendant does not intend to sell it.

5. Furthermore, pursuant to the AVC, the Defendant agreed, in soliciting and/or contracting with consumers, to fully comply with the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1, *et seq.*

B. Allegations Related to the Defendant's Transactions with Scot A. Duncan:

6. On or about July 16, 2006, the Defendant solicited and entered into a consumer transaction, wherein the Defendant represented he would sell a "1970 Trans Am Ram Air IV Engine block that came out of a 1970 Ram Air IV Trans Am with an automatic transmission" to Scot A. Duncan ("Duncan") of Greensboro, North Carolina for a total price of Five Thousand Three Hundred Dollars (\$5,300.00), which Duncan and his father-in-law, Willie Hudson, paid.

7. Shortly after receiving the engine from the Defendant, Duncan contacted the Pontiac Historical Society and learned he had actually received an engine from a 1970 Pontiac Grand Prix, not the 1970 Ram Air IV Trans Am engine he had purchased.

8. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale he would deliver the correct engine to Duncan within a reasonable period of time.

9. As of today, the Defendant has yet to either deliver the Trans Am engine, or to provide a refund to Duncan.

C. Allegations Related to the Defendant's Transactions with Ramon Ryoti:

10. On or about June 11, 2006, the Defendant solicited and entered into a consumer transaction, wherein the Defendant represented he would sell a 1979 Trans Am, vehicle identification number, 2W87Z9L135908, to Ramon Ryoti (Ryoti) for a total price of Three Thousand Five Hundred Dollars (\$3,500.00).

11. On June 11, 2006, Ryoti wrote a deposit check in the amount of One Thousand Five Hundred Dollars (\$1,500.00) to the Defendant, which the Defendant later cashed.

12. The Defendant represented to Ryoti that the 1979 Trans Am would be delivered to or made available for Ryoti to pick-up within a reasonable period of time.

13. To date the Defendant has not delivered or made the 1979 Trans Am available for Ryoti to pick-up, nor has the Defendant refunded Ryoti's deposit.

COUNT I - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

14. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 13 above.

15. The transactions referred to in paragraphs 6 and 10 are "consumer transactions" as defined by Ind. Code § 24-5-0.5-2(a)(1).

16. The Defendant is a "supplier" as defined by Ind. Code § 24-5-0.5-2(a)(3).

17. The Defendant's representation to Duncan the engine had sponsorship, approval, performance, characteristics, accessories, uses, or benefits the Defendant knew or reasonably should have known the transactions did not have, as referenced in paragraph 6, constitutes a violation of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

18. The Defendant's representation to Duncan the engine was of a particular standard, quality, grade, style, or model, when it was not, and the Defendant knew or reasonably should have known it was not, as referenced in paragraphs 6 and 7 above, constitutes a violation of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(2).

19. The Defendants representations to Duncan and Ryoti that the Defendant would deliver the correct engine and or vehicle, or otherwise complete the subject matter of the consumer transactions within a reasonable period of time, as referenced in

paragraphs 8 and 12, when the Defendant knew or reasonably should have known he would not, constitute violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

20. The Defendant's representation to Duncan he would be able to purchase the item as advertised by the Defendant, when the Defendant did not intend to sell it, as referenced in paragraph 6, constitutes a violation of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(11).

**COUNT II – KNOWING AND INTENTIONAL VIOLATIONS OF
THE DECEPTIVE CONSUMER SALES ACT**

21. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 20 above.

22. The misrepresentations and deceptive acts set forth above were committed by the Defendant with the knowledge and intent to deceive.

23. Pursuant to Ind. Code § 24-5-0.5-7(b), the Defendant's violations of the Indiana Deceptive Consumers Sales Act, Ind. Code § 24-5-0.5-1, *et seq.*, as identified in Count I, violate the AVC and constitute prima facie evidence of a deceptive act.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Patrick McIntosh, for a permanent injunction pursuant to Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendant from the following:

- a. representing, expressly or by implication, the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or reasonably should know it does not have;

- b. representing, expressly or by implication, the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not, and the Defendant knows or reasonably should know it is not;
- c. representing, expressly or by implication, the Defendant is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know he cannot or will not; and
- d. representing, expressly or by implication, the consumer will be able to purchase the subject of a consumer transaction as advertised by the Defendant, if the Defendant does not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

- a. cancellation of the Defendant's unlawful contracts with all consumers, including but not limited to Scot A. Duncan and Ramon Ryoti, pursuant to Ind. Code § 24-5-0.5-4(d).
- b. consumer restitution, pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers for the purchase of items from the Defendant, including but not limited to Scot A. Duncan and Ramon Ryoti, in an amount to be determined at trial;

STATE OF INDIANA

COUNTY OF LAKE

IN THE LAKE COUNTY CIRCUIT COURT

CAUSE NO.

45D100602M100006

RECEIVED

FEB 10 2006

Thomas R. Peltz
CLERK LAKE CIRCUIT COURT

IN RE: PATRICK MCINTOSH,

Respondent.

AVC NO.

06-002

Filed in Open Court

FEB 09 2006

ASSURANCE OF VOLUNTARY COMPLIANCE

Thomas R. Peltz
CLERK LAKE SUPERIOR COURT

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General

Terry Tolliver, and the Respondent, Patrick McIntosh, enter into an Assurance of Voluntary

Compliance ("Assurance"), pursuant to Indiana Code § 24-5-0.5-7.

Any violation of the terms of this Assurance constitutes *prima facie* evidence of a deceptive act. This Assurance is entered into without any adjudication of any issue of fact or law, and upon consent of the parties.

The parties agree:

1. The Respondent is an individual, residing at 9425 Belshaw Road, Lowell, Indiana 46356, and transacts business with consumers via the Internet.
2. The terms of this Assurance apply to and are binding upon the Respondent, his employees, agents, representatives, successors, and assigns.
3. The Respondent acknowledges the jurisdiction of the Consumer Protection Division of the Office of the Attorney General to investigate matters hereinafter described, pursuant to the authority of Ind. Code § 4-6-9-4 and Ind. Code § 24-5-0.5-1, *et seq.*
4. The Respondent acknowledges he has been advised the Attorney General's role in this matter is to serve as counsel for the State of Indiana and the State of Indiana has not given the Respondent any legal advice regarding this matter. The Respondent expressly acknowledges

11. Upon execution of this Assurance, the Respondent shall pay consumer restitution in the amount of Five Hundred and 00/100 Dollars (\$500.00) to the Office of the Attorney General on behalf of Murray Aldred of Crossfield Alberta, Canada.

12. Upon execution of this Assurance, the Respondent shall pay costs in the amount of Three Hundred and 00/100 Dollars (\$300.00) to the Office of the Attorney General.

13. The Respondent shall not represent the Office of the Attorney General approves or endorses the Respondent's past or future business practices, or that execution of this Assurance constitutes such approval or endorsement.

14. The Respondent shall fully cooperate with the Office of the Attorney General in the resolution of any future written complaints the Consumer Protection Division receives.

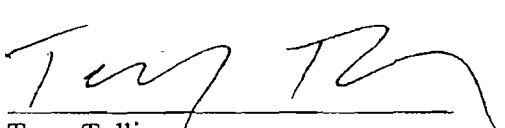
15. The Office of the Attorney General shall file this Assurance with the Circuit Court of Lake County. The Court's approval of this Assurance shall not act as a bar to any private right of action.

DATED this 27th day of January, 2006.

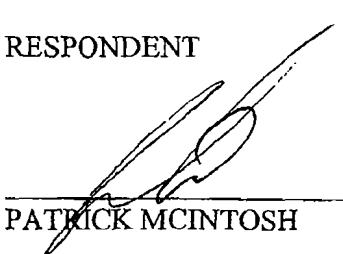
STATE OF INDIANA

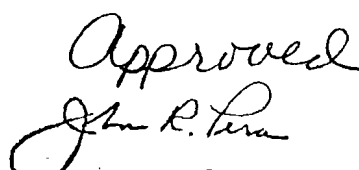
STEVE CARTER
Indiana Attorney General

By:


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302 W. Washington, 5th Floor
Indianapolis, Indiana 46204
Telephone: (317) 233-3300

RESPONDENT


PATRICK MCINTOSH


Approved
FEB 09 2006

APPROVED this ____ day of _____, 2006.

Judge, Lake County Circuit Court

Distribution:

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Indianapolis, IN 46204

Patrick McIntosh
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Lowell, IN 46356